

115TH CONGRESS  
2D SESSION

# S. 3054

To amend title XVIII of the Social Security Act to create alternative sanctions for technical noncompliance with the Stark rule under Medicare, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JUNE 12, 2018

Mr. PERDUE introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend title XVIII of the Social Security Act to create alternative sanctions for technical noncompliance with the Stark rule under Medicare, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-  
2 tives of the United States of America in Congress assembled,*

**3 SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Stark Administrative  
5 Simplification Act of 2018”.

1   **SEC. 2. ALTERNATIVE SANCTIONS FOR TECHNICAL NON-**  
2                   **COMPLIANCE WITH STARK RULE UNDER**  
3                   **MEDICARE.**

4       Section 1877 of the Social Security Act (42 U.S.C.  
5   1395nn) is amended by adding at the end the following  
6   new subsection:

7       “**(j) SELF-DISCLOSURE PROTOCOLS.—**

8               “(1) **IN GENERAL.**—Beginning one year after  
9   the date of the enactment of this subsection—

10              “(A) an entity or individual may volun-  
11               tarily disclose a compensation arrangement with  
12               actual or potential inadvertent technical non-  
13               compliance with subsection (a)(1) (as defined in  
14               paragraph (3)(H)) pursuant to either the self-  
15               referral disclosure protocol (defined in para-  
16               graph (2)) or the alternative protocol for tech-  
17               nical noncompliance under paragraph (3);

18              “(B) disclosures voluntarily withdrawn  
19               from the alternative protocol for technical non-  
20               compliance may be submitted to the self-refer-  
21               ral disclosure protocol; and

22              “(C) an entity that, prior to the establish-  
23               ment of the alternative protocol for technical  
24               noncompliance, disclosed to the self-referral dis-  
25               closure protocol a compensation arrangement  
26               that was in inadvertent technical noncompliance

1       with subsection (a)(1), may elect, not later than  
2       one year after such alternative protocol is estab-  
3       lished, to withdraw such disclosure from the  
4       self-referral disclosure protocol and instead sub-  
5       mit the disclosure to such alternative protocol.

6           “(2) SELF-REFERRAL DISCLOSURE PRO-  
7       TOCOL.—The term ‘self-referral disclosure protocol’  
8       or ‘SRDP’ means the protocol specified in section  
9       6409 of Public Law 111–148.

10          “(3) ALTERNATIVE PROTOCOL FOR INAD-  
11       VERTENT TECHNICAL NONCOMPLIANCE.—

12           “(A) IN GENERAL.—The Secretary shall  
13       establish, not later than one year after the date  
14       of the enactment of this subsection, an alter-  
15       native protocol for technical noncompliance (in  
16       this subsection referred to as the ‘APTN’) to  
17       enable entities to disclose arrangements that  
18       were previously in inadvertent technical non-  
19       compliance with subsection (a)(1) and, upon the  
20       Secretary’s acceptance of the disclosure, make  
21       payment of a civil monetary penalty. Payment  
22       of such civil monetary penalty for an arrange-  
23       ment shall resolve only overpayments due and  
24       owing as a result of such arrangement’s inad-  
25       vertent technical noncompliance with subsection

1                         (a)(1). The provisions of section 6409 of Public  
2                         Law 111–148 shall not apply to this subsection.

3                         “(B) DISCLOSURE REQUIREMENTS.—Ar-  
4                         rangements disclosed to the APTN must—

5                         “(i) involve only inadvertent technical  
6                         noncompliance with subsection (a)(1) that  
7                         was ended by termination or expiration of  
8                         the arrangement, or by action of the par-  
9                         ties to the arrangement to resolve the tech-  
10                         nical noncompliance, prior to the date of  
11                         submission of the disclosure to the APTN;

12                         “(ii) be made in the form and manner  
13                         specified by the Secretary on the public  
14                         Internet website of the Centers for Medi-  
15                         care & Medicaid Services and include de-  
16                         scriptions of—

17                         “(I) the compensation arrange-  
18                         ment that was in technical noncompli-  
19                         ance with subsection (a)(1);

20                         “(II) how and when the technical  
21                         noncompliance with subsection (a)(1)  
22                         was ended or the arrangement was  
23                         otherwise terminated; and

1                         “(III) how the remuneration paid  
2                         under the compensation arrangement  
3                         being disclosed was—

4                         “(aa) consistent with the  
5                         fair market value of the items  
6                         and services that were provided  
7                         under the compensation arrange-  
8                         ment; and

9                         “(bb) not determined in a  
10                         manner that directly or indirectly  
11                         takes into account the volume or  
12                         value of referrals or other busi-  
13                         ness generated between the par-  
14                         ties;

15                         “(iii) include a form settlement agree-  
16                         ment provided by the Secretary signed by  
17                         the entity; and

18                         “(iv) include a certification from the  
19                         entity that, to the best of the entity’s  
20                         knowledge, the information provided is  
21                         truthful information and is based on a  
22                         good faith effort to bring the matter to the  
23                         Secretary’s attention.

24                         “(C) ACCEPTANCE OR REJECTION OF DIS-  
25                         CLOSURE BY THE SECRETARY.—The following

1           rules shall apply to the acceptance or rejection  
2           of a disclosure under the APTN:

3                 “(i) The Secretary shall accept or re-  
4                 ject a complete, accurate, and timely dis-  
5                 closure.

6                 “(ii) Upon receipt of a disclosure, the  
7                 Secretary shall notify the disclosing party  
8                 of such receipt.

9                 “(iii) The Secretary may request addi-  
10                 tional information from the disclosing  
11                 party.

12                 “(iv) Upon acceptance by the Sec-  
13                 retary, the Secretary shall notify the dis-  
14                 closing party in writing of such acceptance.

15                 “(v) The disclosure shall be rejected  
16                 if—

17                         “(I) the disclosing party fails to  
18                 furnish the additional information re-  
19                 quested by the Secretary in such form  
20                 and manner as the Secretary may  
21                 specify; or

22                         “(II) in the Secretary’s sole de-  
23                 termination, the noncompliance dis-  
24                 closed did not meet the disclosure re-

1                    requirements specified in subparagraph  
2                    (B).

3                    “(vi) The disclosure shall be accepted  
4                    if—

5                    “(I) the Secretary has issued a  
6                    written notice to the disclosing party  
7                    that the disclosure is determined to  
8                    satisfy the requirements for disclo-  
9                    sures under this section; or

10                  “(II) the disclosure is complete,  
11                  accurate, and timely and satisfies  
12                  each of the requirements for disclo-  
13                  sures under this section, 180 calendar  
14                  days have passed since notification of  
15                  receipt by the Secretary of the disclo-  
16                  sure, and the Secretary has not re-  
17                  jected the disclosure during that pe-  
18                  riod.

19                  “(vii) In determining whether to ac-  
20                  cept a disclosure, the Secretary may rea-  
21                  sonably rely on the information and certifi-  
22                  cations included in the disclosure.

23                  “(D) RULE FOR WITHDRAWAL OF DISCLO-  
24                  SURE.—Prior to acceptance or rejection of a  
25                  disclosure by the Secretary, an entity may vol-

1           untarily withdraw such disclosure from the  
2           APTN.

3           “(E) CIVIL MONETARY PENALTIES PURSU-  
4           ANT TO THE ALTERNATIVE PROTOCOL FOR  
5           TECHNICAL NONCOMPLIANCE.—

6           “(i) IN GENERAL.—Subject to clause  
7           (ii), for each arrangement disclosed under  
8           this subsection and accepted under sub-  
9           paragraph (C), the Secretary shall impose  
10          a single civil monetary penalty of—

11           “(I) \$5,000, in the case in which  
12          disclosure of the inadvertent technical  
13          noncompliance with subsection (a)(1)  
14          was submitted to the Secretary not  
15          later than the date that is one year  
16          after the initial date of inadvertent  
17          technical noncompliance with sub-  
18          section (a)(1); or

19           “(II) \$10,000, in the case in  
20          which the disclosure of the inad-  
21          vertent technically noncompliance with  
22          subsection (a)(1) was submitted to the  
23          Secretary—

24           “(aa) after the date that is  
25          more than one year after the ini-

13                                 “(ii) SPECIAL RULE FOR ENTITIES  
14                                 THAT DISCLOSED TO THE APTN AFTER  
15                                 WITHDRAWING A DISCLOSURE FROM THE  
16                                 SRDP.—In the case of an entity that elects  
17                                 under paragraph (1)(C) to withdraw a dis-  
18                                 closure from the self-referral disclosure  
19                                 protocol (as defined in paragraph (2)) and  
20                                 instead submit the disclosure to the APTN  
21                                 under this subsection, in determining the  
22                                 applicable civil monetary penalty under  
23                                 clause (i), the date of disclosure to the self-  
24                                 referral disclosure protocol shall be sub-

1                   stituted for the date of disclosure to the  
2                   APTN.

3                   “(F) RELATION TO ADVISORY OPINIONS.—  
4                   The APTN shall be separate from the advisory  
5                   opinion process set forth in regulations imple-  
6                   menting subsection (g) of this section.

7                   “(G) PUBLICATION ON INTERNET WEBSITE  
8                   OF APTN INFORMATION.—Not later than one  
9                   year after the date of the enactment of this  
10                  subsection, the Secretary shall post information  
11                  on the public Internet website of the Centers  
12                  for Medicare & Medicaid Services to inform rel-  
13                  evant stakeholders of how to disclose and make  
14                  payment of a civil monetary penalty for inad-  
15                  vertent technical noncompliance with subsection  
16                  (a)(1).

17                  “(H) DEFINITIONS.—In this subsection:

18                  “(i) TECHNICAL NONCOMPLIANCE.—  
19                  The term ‘technical noncompliance with  
20                  subsection (a)(1)’ means, with respect to a  
21                  compensation arrangement, that—

22                  “(I) the arrangement is not  
23                  signed by one or more parties to the  
24                  arrangement;

1                         “(II) following the expiration of  
2                         the arrangement, the arrangement  
3                         was a holdover arrangement for a pe-  
4                         riod longer than permitted in regula-  
5                         tions issued by the Secretary; or

6                         “(III) the contemporaneous writ-  
7                         ten documentation evidencing the  
8                         terms of the arrangement identifies  
9                         the parties to the arrangement and  
10                         the items, services, space, or equip-  
11                         ment, as applicable, but is not suffi-  
12                         cient to satisfy the writing require-  
13                         ment of an applicable exception.

14                         “(ii) INADVERTENT.—The term ‘inad-  
15                         vertent’ means, with respect to a com-  
16                         pensation arrangement that is in technical  
17                         noncompliance with subsection (a)(1), that  
18                         an entity that is a party to the compensa-  
19                         tion arrangement did not know or should  
20                         not have known of the noncompliance.

21                         “(I) ADMINISTRATION.—Chapter 35 of  
22                         title 44, United States Code, shall not apply to  
23                         this subsection.

24                         “(J) IMPLEMENTATION.—Notwithstanding  
25                         any other provision of law, the Secretary may

- 1        implement the provisions of this paragraph by
- 2        program instruction or otherwise.”.

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